

REMARKS

In the non-final Office Action, the Examiner rejects claims 51, 52, 73, and 74 under 35 U.S.C. § 101 as directed to non-statutory subject matter; rejects claims 36, 37, 42-44, 49-58, 61-68, and 71-74 under 35 U.S.C. § 102(e) as anticipated by PAAKKONEN (U.S. Patent Application Publication No. 2004/0121818); rejects claims 38, 39, 45, 46, 59, and 69 under 35 U.S.C. § 103(a) as unpatentable over PAAKKONEN in view of HEINONEN et al. (U.S. Patent No. 6,671,370); and rejects claims 40, 41, 47, 48, 60, and 70 under 35 U.S.C. § 103(a) as unpatentable over PAAKKONEN. Applicant respectfully traverses these rejections.

By way of the present amendment, Applicant cancels claims 38-40, 45-47, 59, 60, 69, and 70 without prejudice or disclaimer, and amends claims 36, 37, 41, 43, 44, 48-58, 61-68, and 71-74 to improve form. No new matter has been added by way of the present amendment. Claims 36, 37, 41-44, 48-58, 61-68, and 71-74 remain pending.

Rejection under 35 U.S.C. § 101

Claims 51, 52, 73, and 74 stand rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

While not acquiescing in the rejection of claims 51, 52, 73, and 74, Applicant amends claims 51, 52, 73, and 74 to address the Examiner's concerns. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 51, 52, 73, and 74 under 35 U.S.C. § 101.

Rejection under 35 U.S.C. § 102(e) based on PAAKKONEN

Claims 36, 37, 42-44, 49-58, 61-68, and 71-74 stand rejected under 35 U.S.C. § 102(e) as allegedly anticipated by PAAKKONEN. Applicant respectfully traverses this rejection.

Independent claims 36, 43, 51-53, 62, 73, and 74 have been amended to substantially include the feature recited in claim 40. The Examiner rejects claim 40 under 35 U.S.C. § 103(a) as allegedly unpatentable over PAAKKONEN. Thus, Applicant will address independent claims 36, 43, 51-53, 62, 73, and 74, as well as dependent claims 37, 42, 44, 49, 50, 54-58, 61, 63-68, 71, and 72, which depend from independent claims 36, 43, 53, and 62, as if rejected under the 35 U.S.C. § 103(a) based on PAAKKONEN.

Independent claim 36, as amended, is directed to a method of sending a call relevance flag with a call for use in alerting a called party. The method comprises selecting, by a calling party, at least one call relevance flag for use in alerting a called party of a phone call, the at least one relevance flag indicating a mood of the calling party; setting up a voice connection to a called party phone; and transmitting said at least one call relevance flag to the called party phone during the setting up of the voice connection, such that the call relevance flag can be used for selecting a manner of alerting the called party of the phone call provided over the voice connection. PAAKKONEN does not disclose or suggest at least one of these features.

For example, PAAKKONEN does not disclose or suggest selecting, by a calling party, at least one call relevance flag for use in alerting a called party of a phone call, the at least one relevance flag indicating a mood of the calling party. This feature is similar to (yet possibly of different scope than) a feature recited in claim 40 (which is canceled herein). With respect to that claim, the Examiner admits that PAAKKONEN does not disclose at least one relevance flag indicating a mood of the calling party and alleges (Office Action, p. 18):

Paakkonen teaches that the calling party can select a specific ringing image (read on the claimed limitation "call relevance flag") which can be a picture ("a ringing image identifier may be selected by the user of the originating mobile station 100 from a plurality of ringing image identifiers stored in originating mobile station 100 and transmitted as part of the ringing image call setup message 102" see [0026]) and/or text ("selecting one or more files such as audio, images/video, text,

etc." see [0042] and "each ringing image may include data comprising a combination of sound and images/video coupled with text together with a format for presenting such multimedia to the user" see [0031]); therefore it would have been obvious ... to use the teaching of Paakkonen to indicating a mood of the calling party as the calling party having a choice to send a specific picture or specific note to show the calling party's mood such as angry, sad, happy, content, nervous, anxious and scared, so that the called party can see it before the called party accepts the call; thus increasing the quality of service.

Applicant submits that the Examiner's allegation is merely a conclusory statement. Such conclusory statements have been repeatedly held to be insufficient for establishing a *prima facie* case of obviousness. In this respect, Applicant relies upon *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (April 30, 2007) (citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)), where it was held that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

Furthermore, the Examiner does not explain how incorporating the ability of a calling party to select at least one call relevance flag for use in alerting a called party of a phone call, where the at least one relevance flag indicates a mood of the calling party into the PAAKKONEN system would increase the quality of service. In fact, it is unclear how a relevance flag that indicates the mood of the calling party could in any way affect quality of service. PAAKKONEN merely discloses the ability of a calling party to select a ringing image. PAAKKONEN in no way discloses or suggests that the ringing image in any way reflects the mood of the calling party. It is clear that the Examiner's incorporation of the above feature of claim 36 is based purely on impermissible hindsight. In any event, the Examiner's allegations fall short of providing the articulated reasoning required by KSR.

For at least the foregoing reasons, Applicant submits that claim 1 is patentable over PAAKKONEN. Accordingly, Applicant respectfully request that the Examiner reconsider and

withdraw any contemplated rejection of claim 36 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Claims 37 and 42 depend from claim 36. Therefore, these claims are patentable over PAAKKONEN for at least the reasons given above with respect to claim 36. Accordingly, Applicant respectfully request that the Examiner reconsider and withdraw any contemplated rejection of claims 37 and 42 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Independent claims 43, 51-53, 62, 73, and 74, as amended, recite features similar to (yet possibly of different scope than) features described above with respect to claim 36. Therefore, Applicant submits that these claims are patentable over PAAKKONEN for at least reasons similar to reasons given above with respect to claim 36. Accordingly, Applicant respectfully request that the Examiner reconsider and withdraw any contemplated rejection of claims 43, 51-53, 62, 73, and 74 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Claims 44, 49, and 50 depend from claim 43. Therefore, these claims are patentable over PAAKKONEN for at least the reasons given above with respect to claim 43. Accordingly, Applicant respectfully request that the Examiner reconsider and withdraw any contemplated rejection of claims 44, 49, and 50 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Claims 54-58 and 61 depend from claim 53. Therefore, these claims are patentable over PAAKKONEN for at least the reasons given above with respect to claim 53. Accordingly, Applicant respectfully request that the Examiner reconsider and withdraw any contemplated rejection of claims 54-58 and 61 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Claims 63-68, 71, and 72 depend from claim 62. Therefore, these claims are patentable over PAAKKONEN for at least the reasons given above with respect to claim 62. Accordingly,

Applicant respectfully request that the Examiner reconsider and withdraw any contemplated rejection of claims 63-68, 71, and 72 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Rejection under 35 U.S.C. § 103(a) based on PAAKKONEN and HEINONEN et al.

Claims 38, 39, 45, 46, 59, and 69 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PAAKKONEN in view of HEINONEN et al. Applicant cancels claims 38, 39, 45, 46, 59, and 69 herein without prejudice or disclaimer, thereby rendering the rejection of these claims moot.

Rejection under 35 U.S.C. § 103(a) based on PAAKKONEN

Pending claims 41 and 48 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over PAAKKONEN. Applicant respectfully traverses this rejection.

Claim 41 depends from claim 36 and claim 48 depends from claim 43. Therefore, these claims are patentable over PAAKKONEN for at least the reasons given above with respect to claims 36 and 43. Accordingly, Applicant respectfully request that the Examiner reconsider and withdraw the rejection of claims 41 and 48 under 35 U.S.C. § 103(a) based on PAAKKONEN.

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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